

110TH CONGRESS  
2D SESSION

# H. R. 5892

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## AN ACT

To amend title 38, United States Code, to direct the Secretary of Veterans Affairs to modernize the disability benefits claims processing system of the Department of Veterans Affairs to ensure the accurate and timely delivery of compensation to veterans and their families and survivors, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
 5 “Veterans Disability Benefits Claims Modernization Act  
 6 of 2008”.

7 (b) TABLE OF CONTENTS.—The table of contents for  
 8 this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Findings.

**TITLE I—MATTERS RELATING TO MODERNIZING THE DIS-**  
**ABILITY COMPENSATION SYSTEM OF DEPARTMENT OF VET-**  
**ERANS AFFAIRS**

Sec. 101. Office of Survivors Assistance.

Sec. 102. Study on readjustment of schedule for rating disabilities.

Sec. 103. Study on employee work credit system of Veterans Adminis-  
 tration.

Sec. 104. Study on work management system.

Sec. 105. Certification and training of employees of Veterans Benefits Adminis-  
 tration responsible for processing claims.

Sec. 106. Annual assessment of quality assurance program.

Sec. 107. Expedited treatment of fully developed claims and requirement for  
 checklist to be provided to individuals submitting incomplete  
 claims.

Sec. 108. Study and report on employing medical professionals to assist em-  
 ployees of Veterans Benefits Administration.

Sec. 109. Assignment of partial disability ratings to qualifying veterans.

Sec. 110. Review and enhancement of use of information technology at Vet-  
 erans Benefits Administration.

Sec. 111. Treatment of claims upon death of claimant.

**TITLE II—MATTERS RELATING TO UNITED STATES COURT OF**  
**APPEALS FOR VETERANS CLAIMS**

Sec. 201. Annual reports on workload of United States Court of Appeals for  
 Veterans Claims.

Sec. 202. Modification of jurisdiction and finality of decisions of United States  
 Court of Appeals for Veterans Claims.

9 **SEC. 2. FINDINGS.**

10 Congress makes the following findings:

1           (1) At the end of fiscal year 2007, there were  
2           nearly 24,000,000 veterans in America.

3           (2) According to the latest Annual Report from  
4           the Veterans Benefits Administration, there were  
5           3,582,255 veterans and survivors receiving com-  
6           pensation and pension benefits under laws adminis-  
7           tered by the Secretary of Veterans Affairs at the end  
8           of fiscal year 2006.

9           (3) The number of veterans and survivors at  
10          the end of fiscal year 2006 included 2,725,824 vet-  
11          erans receiving service-connected disability benefits,  
12          325,939 survivors receiving service-connected death  
13          benefits, 329,856 veterans receiving non-service-con-  
14          nected disability benefits, and 200,636 survivors re-  
15          ceiving non-service-connected death benefits.

16          (4) During fiscal year 2006, almost 250,000  
17          beneficiaries began receiving benefits with 162,805  
18          of these being veterans whose compensation claims  
19          were granted.

20          (5) Since October 7, 2001, the number of  
21          claims for new or increased benefits has risen sharp-  
22          ly, exceeding 838,000 in 2007.

23          (6) The Department of Veterans Affairs  
24          projects that the number of claims will surpass  
25          1,000,000 by the end of fiscal year 2008.

1           (7) The number of disability compensation  
2           claims pending before the Department stands at  
3           nearly 630,000, as of the date of the enactment of  
4           this Act, about a quarter of which have been back-  
5           logged for over six months.

6           (8) Processing times have increased from an av-  
7           erage of 177 days in 2006 to 183 days in 2007.

8           (9) The paper-based, labor-intensive process  
9           employed by the Department leaves many disabled  
10          veterans and survivors waiting months or years to  
11          receive the benefits they have earned.

12          (10) The most prevalent disabilities among vet-  
13          erans that are service-connected are auditory, with  
14          almost 840,000 veterans receiving compensation for  
15          such a disability, followed by musculoskeletal disabil-  
16          ities and arthritis.

17          (11) Post-traumatic stress disorder is the sixth  
18          most common disability, with more than 269,399  
19          service-connected veterans.

20          (12) In 2006, the Veterans Health Administra-  
21          tion treated 345,713 veterans with post-traumatic  
22          stress disorder, which was an increase of 27,099  
23          over 2005.

24          (13) By January 2008, of the 1,600,000 vet-  
25          erans who served in the Armed Forces after October

1       7, 2001, the Veterans Health Administration had  
2       treated 59,838 for post-traumatic stress disorder.

3           (14) Disabilities are evaluated in accordance  
4       with the Department of Veterans Affairs Schedule  
5       for Rating Disabilities (referred to in this section as  
6       the “VASRD”) under title 38, United States Code  
7       of Federal Regulations, part 4.

8           (15) This schedule was originally created in  
9       1917 and was last comprehensively revised in 1945.

10          (16) The VASRD contains many outdated and  
11       archaic criteria and lacks more commonly accepted  
12       medical practices and procedures.

13          (17) Studies conducted by the Institute of Med-  
14       icine found it to be an inadequate instrument for  
15       compensating disabilities for the average impair-  
16       ments of earning capacity, especially in areas of  
17       mental health, unemployability, and for younger and  
18       severely injured veterans, and recommended it be re-  
19       vised using more modern medical concepts.

20          (18) The Department of Veterans Affairs must  
21       modernize the claims processing system of the Vet-  
22       erans Benefits Administration to make it a first-  
23       class, veteran-centered system that uses 21st cen-  
24       tury technologies and paradigms and reflects the

1 dignity and sacrifices made by disabled veterans,  
2 their families, and survivors.

3 **TITLE I—MATTERS RELATING**  
4 **TO MODERNIZING THE DIS-**  
5 **ABILITY COMPENSATION SYS-**  
6 **TEM OF DEPARTMENT OF**  
7 **VETERANS AFFAIRS**

8 **SEC. 101. OFFICE OF SURVIVORS ASSISTANCE.**

9 (a) IN GENERAL.—Chapter 3 of title 38, United  
10 States Code, is amended by adding at the end the fol-  
11 lowing new section:

12 **“§ 321. Office of Survivors Assistance**

13 “(a) ESTABLISHMENT.—The Secretary shall estab-  
14 lish in the Veterans Benefits Administration an Office of  
15 Survivors Assistance (in this section referred to as the ‘Of-  
16 fice’) to provide direct assistance regarding all benefits  
17 and services delivered by the Department—

18 “(1) to survivors and dependents of all deceased  
19 veterans; and

20 “(2) to survivors and dependents of all deceased  
21 members of the Armed Forces.

22 “(b) DUTIES.—The Office shall—

23 “(1) be responsible for ensuring that—

24 “(A) survivors and dependents of deceased  
25 veterans and deceased members of the Armed

1 Forces have access to applicable benefits and  
2 services under this title;

3 “(B) programs carried out by the Depart-  
4 ment under this title for such survivors and de-  
5 pendents are carried out in a manner that is re-  
6 sponsive to such survivors and dependents and  
7 their unique needs;

8 “(C) regular and consistent monitoring of  
9 benefits delivery occurs;

10 “(D) appropriate referrals are being made  
11 with respect to such survivors and dependents  
12 by, to, and within the Veterans Benefits Admin-  
13 istration, Veterans Health Administration, and  
14 National Cemetery Administration; and

15 “(E) such survivors and dependents are  
16 treated with dignity and respect by personnel of  
17 the Department; and

18 “(2) act as a primary advisor to the Secretary  
19 on all matters related to the policies, programs, leg-  
20 islative issues, and other initiatives affecting such  
21 survivors and dependents.

22 “(c) ANNUAL REPORT.—The Secretary shall identify  
23 and include the activities of the Office in the annual report  
24 to Congress under section 529 of this title.

1       “(d) GUIDANCE FROM STAKEHOLDERS.—In estab-  
 2       lishing the Office, the Secretary shall seek guidance from  
 3       interested stakeholders, including appropriate employees,  
 4       employee representatives, managers, and appropriate pub-  
 5       lic and private entities, including veteran service organiza-  
 6       tions and other service organizations.

7       “(e) RESOURCES.—The Secretary shall ensure that  
 8       appropriate personnel, funding, and other resources are  
 9       provided to the Office to carry out its responsibilities.”.

10       (b) CLERICAL AMENDMENT.—The table of sections  
 11       at the beginning of such chapter is amended by adding  
 12       at the end the following new item:

“321. Office of Survivors Assistance.”.

13       **SEC. 102. STUDY ON READJUSTMENT OF SCHEDULE FOR**  
 14       **RATING DISABILITIES.**

15       (a) STUDY ON ADJUSTMENT OF SCHEDULE.—

16       (1) STUDY REQUIRED.—The Secretary of Vet-  
 17       erans Affairs shall conduct a study on adjusting the  
 18       schedule for rating disabilities adopted and applied  
 19       by the Secretary under section 1155 of title 38,  
 20       United States Code, so as to base the schedule on  
 21       standards, practices, and codes in common use by  
 22       the medical, mental health, and disability professions  
 23       that are current as of the date of the enactment of  
 24       this Act.



1           (2) CONTENTS OF STUDY.—In conducting the  
2 study under this subsection, the Secretary shall—

3           (A) determine how the schedule could be  
4 adjusted to take into account the loss of quality  
5 of life and loss of earnings that result from spe-  
6 cific disabilities;

7           (B) examine the nature of the disabilities  
8 for which disability compensation is payable  
9 under laws other than laws administered by the  
10 Secretary;

11          (C) examine whether disparities exist be-  
12 tween the rating of physical and mental disabil-  
13 ities, especially with respect to how the severity  
14 of mental disabilities should be adjudicated to  
15 ensure parity with physical disabilities whereby  
16 a veteran can be rated totally disabled while  
17 maintaining some level of employment;

18          (D) measure the effect of disabilities on  
19 the psychological states, physical integrity, and  
20 social adaptability of veterans with such disabil-  
21 ities; and

22          (E) examine the effect of a veteran's injury  
23 or combination of injuries on—

1 (i) the average loss of the veteran's  
2 earnings capacity, including the veteran's  
3 inability to work in certain occupations;

4 (ii) the veteran's quality of life, in-  
5 cluding activities of independent living, rec-  
6 reational and community activities, and  
7 personal relationships, including the inabil-  
8 ity to participate in favorite activities, so-  
9 cial problems related to disfigurement or  
10 cognitive difficulties, and the need to spend  
11 increased amounts of time performing ac-  
12 tivities of daily living; and

13 (iii) the extent to which benefits for  
14 veterans may be used to encourage vet-  
15 erans to seek and undergo vocational reha-  
16 bilitation.

17 (3) CONSULTATION.—In conducting the study  
18 under this subsection, the Secretary shall consult  
19 with appropriate public and private entities, agen-  
20 cies, and veterans service organizations, and shall  
21 employ consultants.

22 (4) DEADLINE FOR COMPLETION.—The Sec-  
23 retary shall complete the study required under this  
24 subsection by not later than 180 days after the date  
25 of the enactment of this Act.

1           (5) REPORT TO CONGRESS.—Not later than 60  
2       days after completing the study required under this  
3       subsection, the Secretary shall submit to Congress a  
4       report on the study. The report shall include—

5           (A) the results of the study on quality of  
6       life and the payment of compensation for serv-  
7       ice-connected disabilities for which the Sec-  
8       retary entered into a contract on January 28,  
9       2008;

10          (B) the Secretary’s findings and conclu-  
11       sions with respect to adjusting the schedule for  
12       rating disabilities adopted and applied by the  
13       Secretary under section 1155 of title 38, United  
14       States Code, to account for the loss of quality  
15       of life and loss of earnings that result from spe-  
16       cific disabilities;

17          (C) the Secretary’s findings and conclu-  
18       sions with respect to—

19           (i) the report of the Veterans’ Dis-  
20       ability Benefits Commission;

21           (ii) the report of the President’s Com-  
22       mission on the Care for America’s Return-  
23       ing Wounded Warriors;

24           (iii) the report of the Institute of  
25       Medicine entitled “A 21st Century System

1           for Evaluating Veterans for Disability  
2           Benefits”; and

3                   (iv) any other independent or advisory  
4           commission report on matters relating to  
5           such schedule that the Secretary deter-  
6           mines is appropriate;

7           (D) the Secretary’s recommendations with  
8           respect to the appropriate disabilities for inclu-  
9           sion in the schedule;

10           (E) the Secretary’s recommendations with  
11           respect to the amount of compensation payable  
12           to veterans for the loss of quality of life and the  
13           basis for such recommendations;

14           (F) the Secretary’s recommendations with  
15           respect to the amount of compensation payable  
16           to veterans for average loss of earnings capacity  
17           and the appropriate standards for determining  
18           whether a disability has caused a veteran to  
19           incur a loss of earnings capacity;

20           (G) the Secretary’s assessment of the ef-  
21           fect of the treatment of mental disabilities  
22           under the schedule for rating disabilities, as in  
23           effect on the date of the enactment of this Act;  
24           and

1 (H) the Secretary's determination with re-  
2 spect to whether the regulations prescribed pur-  
3 suant to section 1154 of title 38, United States  
4 Code, are consistent with providing, to the max-  
5 imum extent possible, the benefit of the doubt  
6 to veterans covered by that section in the ab-  
7 sence of official military records pertaining to  
8 the service-connection of a veteran's disability,  
9 and in particular, of post-traumatic stress dis-  
10 order, when a determination of service-connec-  
11 tion would be consistent with the duties, condi-  
12 tions, and hardships of service in the Armed  
13 Forces.

14 (b) SUBMISSION OF PLAN.—

15 (1) PLAN REQUIRED.—Not later than 120 days  
16 after the date on which the Secretary submits the  
17 report required under subsection (a)(5), the Sec-  
18 retary shall submit to Congress a plan to readjust  
19 the schedule for rating disabilities adopted and ap-  
20 plied by the Secretary under section 1155 of title 38,  
21 United States Code. In developing the plan required  
22 under this subsection, the Secretary shall consider  
23 the report submitted under subsection (a)(5) and  
24 shall provide for the readjustment of such schedule  
25 for rating disabilities to—

1 (A) align the schedule with medical con-  
2 cepts considered best practices as of the date of  
3 the enactment of this Act, including those pro-  
4 vided in the Current Procedural Terminology  
5 Manual, International Classification of Dis-  
6 eases, the Diagnostic and Statistical Manual of  
7 Mental Disorders, and applicable American  
8 Medical Association Guides;

9 (B) bridge the gap between the schedule,  
10 as in effect on the date of the enactment of this  
11 Act, and medical understandings, as of such  
12 date, of injuries and diseases and the affects of  
13 such injuries and diseases on the ability of a  
14 person suffering from them to function;

15 (C) prioritize such readjustment with re-  
16 spect to post-traumatic stress disorder, other  
17 mental disorders, neurological disorders, trau-  
18 matic brain injury, orthopedic disabilities, and  
19 digestive disabilities;

20 (D) ensure that the schedule is automated  
21 in accordance with the review and comprehen-  
22 sive plan of the Secretary under section 110 of  
23 this Act; and

24 (E) ensure that a transition plan is pro-  
25 vided to ease the transition from the schedule

1           for rating disabilities, as in effect on the date  
2           of the enactment of this Act, to the implemen-  
3           tation of the schedule for rating disabilities, as  
4           proposed to be readjusted by the plan under  
5           this subsection.

6           (2) **TIMELINE FOR READJUSTMENT.**—The Sec-  
7           retary shall include in the plan submitted under the  
8           subsection a proposed timeline for when the Sec-  
9           retary intends to readjust the schedule. Such pro-  
10          posed timeline may not exceed three years.

11          (c) **AUTHORIZATION OF APPROPRIATIONS.**—There  
12          are authorized to be appropriated such sums as may be  
13          necessary to carry out subsections (a) and (b).

14          (d) **ADVISORY COMMITTEE ON DISABILITY COM-**  
15          **PENSATION.**—

16               (1) **ESTABLISHMENT.**—Subchapter III of chap-  
17          ter 5 of title 38, United States Code, is amended by  
18          adding at the end the following new section:

19          **“§ 546. Advisory Committee on Disability Compensa-**  
20               **tion**

21               “(a) **ESTABLISHMENT.**—(1) There is in the Depart-  
22          ment the Advisory Committee on Disability Compensation  
23          (hereinafter in this section referred to as the ‘Committee’).

1       “(2) The Committee shall consist of not more than  
2 18 members appointed by the Secretary from among indi-  
3 viduals who—

4               “(A) have demonstrated significant civic or pro-  
5 fessional achievement; and

6               “(B) have experience with the provision of dis-  
7 ability compensation by the Department or are lead-  
8 ing medical or scientific experts in relevant fields.

9       “(3) The Secretary shall seek to ensure that members  
10 appointed to the Committee include individuals from a  
11 wide variety of geographic areas and ethnic backgrounds,  
12 individuals from veterans service organizations, individ-  
13 uals with combat experience, and women.

14       “(4) The Secretary shall determine the terms of serv-  
15 ice and pay and allowances of the members of the Com-  
16 mittee, except that a term of service may not exceed two  
17 years. The Secretary may reappoint any member for addi-  
18 tional terms of service.

19       “(b) RESPONSIBILITIES OF COMMITTEE.—(1) The  
20 Secretary shall, on a regular basis, consult with and seek  
21 the advice of the Committee with respect to the mainte-  
22 nance and periodic readjustment of the schedule for rating  
23 disabilities under section 1155 of this title.

24       “(2)(A) In providing advice to the Secretary under  
25 this subsection, the Committee shall—



1           “(i) assemble and review relevant information  
2 relating to the needs of veterans with disabilities;

3           “(ii) provide information relating to the nature  
4 and character of disabilities arising from service in  
5 the Armed Forces;

6           “(iii) provide an on-going assessment of the ef-  
7 fectiveness of the schedule for rating disabilities; and

8           “(iv) provide on-going advice on the most ap-  
9 propriate means of responding to the needs of vet-  
10 erans relating to disability compensation in the fu-  
11 ture.

12          “(B) In carrying out its duties under subparagraph  
13 (A), the Committee shall take into special account the  
14 needs of veterans who have served in a theater of combat  
15 operations.

16          “(c) ANNUAL REPORT.—(1) Not later than March 31  
17 of each year, the Committee shall submit to the Secretary  
18 a report on the programs and activities of the Department  
19 that relate to the payment of disability compensation.  
20 Each such report shall include—

21               “(A) an assessment of the needs of vet-  
22 erans with respect to disability compensation;

23               “(B) a review of the programs and activi-  
24 ties of the Department designed to meet such  
25 needs; and

1                   “(C) such recommendations (including rec-  
2                   ommendations for administrative and legislative  
3                   action) as the Committee considers appropriate.

4           “(2) Not later than 90 days after the receipt of a  
5 report under paragraph (1), the Secretary shall transmit  
6 to the Committees on Veterans’ Affairs of the Senate and  
7 House of Representatives a copy of the report, together  
8 with any comments and recommendations concerning the  
9 report that the Secretary considers appropriate.

10          “(3) The Committee may also submit to the Sec-  
11 retary such other reports and recommendations as the  
12 Committee considers appropriate.

13          “(4) The Secretary shall submit with each annual re-  
14 port submitted to the Congress pursuant to section 529  
15 of this title a summary of all reports and recommendations  
16 of the Committee submitted to the Secretary since the pre-  
17 vious annual report of the Secretary submitted pursuant  
18 to that section.

19          “(d) APPLICABILITY OF FEDERAL ADVISORY COM-  
20 MITTEE ACT.—(1) Except as provided in paragraph (2),  
21 the provisions of the Federal Advisory Committee Act (5  
22 U.S.C. App.) shall apply to the activities of the Committee  
23 under this section.

24          “(2) Section 14 of such Act shall not apply to the  
25 Committee.”.

1           (2) CLERICAL AMENDMENT.—The table of sec-  
 2           tions at the beginning of such chapter is amended  
 3           by adding at the end of the items relating to sub-  
 4           chapter III the following new item:

“546. Advisory Committee on Disability Compensation.”.

5   **SEC. 103. STUDY ON EMPLOYEE WORK CREDIT SYSTEM OF**  
 6                           **VETERANS BENEFITS ADMINISTRATION.**

7           (a) STUDY REQUIRED.—The Secretary of Veterans  
 8   Affairs shall conduct a study on the employee work credit  
 9   system of the Veterans Benefits Administration of the De-  
 10   partment of Veterans Affairs, which is used to measure  
 11   the work production of employees of the Veterans Benefits  
 12   Administration.

13          (b) CONTENTS OF STUDY.—In carrying out the study  
 14   under subsection (a), the Secretary shall consider the ad-  
 15   visability of implementing—

16               (1) performance standards and accountability  
 17           measures to ensure that—

18                       (A) claims for benefits under the laws ad-  
 19           ministered by the Secretary are processed in an  
 20           objective, accurate, consistent, and efficient  
 21           manner; and

22                       (B) final decisions with respect to such  
 23           claims are consistent and issued within the av-  
 24           erage amount of time required to process a  
 25           claim, as identified by the Secretary in the most

1 recent annual report submitted by the Secretary  
2 under section 7734 of title 38, United States  
3 Code;

4 (2) guidelines and procedures for the prompt  
5 processing of such claims that are ready to rate  
6 upon submission;

7 (3) guidelines and procedures for the processing  
8 of such claims submitted by severely injured and  
9 very severely injured veterans, as determined by the  
10 Secretary; and

11 (4) requirements for assessments of claims  
12 processing at each regional office for the purpose of  
13 producing lessons learned and best practices.

14 (c) REPORT TO CONGRESS.—Not later than 180 days  
15 after the date of the enactment of this Act, the Secretary  
16 shall submit to Congress a report on the study conducted  
17 under this section and the progress of the Secretary in  
18 implementing the new system for evaluating employees of  
19 the Veterans Benefits Administration required under sub-  
20 section (d).

21 (d) EVALUATION OF VETERANS BENEFITS ADMINIS-  
22 TRATION EMPLOYEES.—

23 (1) NEW SYSTEM REQUIRED.—By not later  
24 than 180 days after the date on which the Secretary  
25 of Veterans Affairs submits to Congress the report

1 required under subsection (d), the Secretary shall es-  
2 tablish a new system for evaluating the work produc-  
3 tion of employees of the Veterans Benefits Adminis-  
4 tration. Such system shall—

5 (A) be based on the findings of the study  
6 conducted by the Secretary under this section;

7 (B) focus on evaluating the accuracy and  
8 quality of ratings decisions made by such em-  
9 ployees; and

10 (C) not resemble or be based on any con-  
11 cept on which the system in effect as of the  
12 date of the enactment of this Act is based.

13 (2) SUSPENSION OF AWARD OF WORK CRED-  
14 ITS.—If the Secretary of Veterans Affairs does not  
15 implement the new system for evaluating work pro-  
16 duction as required under paragraph (1), the Sec-  
17 retary may not award a work credit to any employee  
18 of the Veterans Benefits Administration until the  
19 Secretary has implemented such system.

20 **SEC. 104. STUDY ON WORK MANAGEMENT SYSTEM.**

21 (a) IN GENERAL.—The Secretary of Veterans Affairs  
22 shall conduct a study on the work management system  
23 of the Veterans Benefits Administration of the Depart-  
24 ment of Veterans Affairs, which is designed to improve  
25 accountability, quality, and accuracy, and reduce the time

1 for processing claims for benefits under laws administered  
2 by the Secretary that are adjudicated by the Veterans  
3 Benefits Administration.

4 (b) CONTENTS OF STUDY.—In conducting the study  
5 required under subsection (a), the Secretary shall con-  
6 sider—

7 (1) accountability for claims adjudication out-  
8 comes;

9 (2) the quality of claims adjudicated;

10 (3) a simplified process to adjudicate claims;

11 (4) the maximum use of information technology  
12 applications;

13 (5) rules-based applications and tools for proc-  
14 essing and adjudicating claims efficiently and effec-  
15 tively; and

16 (6) methods of reducing the time required to  
17 obtain information from outside sources.

18 (c) REPORT TO CONGRESS.—Not later than 180 days  
19 after the date of the enactment of this Act, the Secretary  
20 shall submit to Congress a report on the study conducted  
21 under this section.

22 **SEC. 105. CERTIFICATION AND TRAINING OF EMPLOYEES**  
23 **OF VETERANS BENEFITS ADMINISTRATION**  
24 **RESPONSIBLE FOR PROCESSING CLAIMS.**

25 (a) EMPLOYEE CERTIFICATION REQUIRED.—

1           (1) IN GENERAL.—Subchapter II of chapter 77  
2           of title 38, United States Code, is amended by add-  
3           ing at the end the following new section:

4   **“§ 7735. Employee certification**

5           “(a) DEVELOPMENT OF CERTIFICATION EXAMINA-  
6   TION.—The Secretary shall develop a certification exam-  
7   ination for appropriate employees and managers of the  
8   Veterans Benefits Administration who are responsible for  
9   processing claims for benefits under the laws administered  
10   by the Secretary. The Secretary shall develop such exam-  
11   ination in consultation with examination development ex-  
12   perts, interested stakeholders, including such appropriate  
13   employees, employee representatives, and managers, and  
14   appropriate public and private entities, including veterans  
15   service organizations and other service organizations.

16          “(b) EMPLOYEE AND MANAGER REQUIREMENT.—  
17   The Secretary shall require appropriate employees and  
18   managers of the Veterans Benefits Administration who  
19   are responsible for processing claims for benefits under  
20   the laws administered by the Secretary to take a certifi-  
21   cation examination.

22          “(c) LIMITATION.—The Secretary may not satisfy  
23   any requirement of this section through the use of any  
24   certification examination or program that exists as of the

1 date of the enactment of the Veterans Disability Benefits  
2 Claims Modernization Act of 2008.”.

3 (2) DEADLINES FOR IMPLEMENTATION.—The  
4 Secretary of Veterans Affairs shall—

5 (A) develop the certification examination  
6 required to be developed under section 7735 of  
7 title 38, United States Code, as added by sub-  
8 section (a), by not later than one year after the  
9 date of the enactment of this Act; and

10 (B) implement procedures for admin-  
11 istering the certification of employees under  
12 such section and begin administering the certifi-  
13 cation examination required under such section  
14 by not later than 90 days after the date on  
15 which the development of such certification ex-  
16 amination is complete.

17 (3) CLERICAL AMENDMENT.—The table of sec-  
18 tions at the beginning of such chapter is amended  
19 by adding at the end of the items relating to sub-  
20 chapter II the following new item:

“7735. Employee certification.”.

21 (b) EVALUATION OF TRAINING.—

22 (1) EVALUATION REQUIRED.—The Secretary of  
23 Veterans Affairs shall enter into a contract with a  
24 private entity with experience evaluating training  
25 processes, continuing education needs, and central-



1        ized training requirements, under which that entity  
2        shall—

3                (A) conduct an evaluation of the items re-  
4                quired to be included in the annual report of  
5                the Secretary under section 7734 of title 38,  
6                United States Code, that were included in the  
7                last such report submitted before the date of  
8                the enactment of this Act, that relate to the  
9                training and performance assessment programs  
10              of the Department of Veterans Affairs for em-  
11              ployees of the Veterans Benefits Administration  
12              who are responsible for matters relating to com-  
13              pensation or pension benefits under the laws  
14              administered by the Secretary; and

15              (B) not later than 180 days after the date  
16              of the enactment of this Act, submit to the Sec-  
17              retary the results of such evaluation.

18              (2) SUBMISSION OF RESULTS TO CONGRESS.—

19        The Secretary shall include the results of the evalua-  
20        tion required under paragraph (1) with the first an-  
21        nual report required to be submitted to Congress  
22        under section 529 of title 38, United States Code,  
23        submitted after the date on which the Secretary re-  
24        ceives such results.

1           (3) REPORT.—Not later than 180 days after  
2           the date on which the Secretary submits the report  
3           referred to in paragraph (2), the Secretary shall  
4           submit to Congress a report on any actions the Sec-  
5           retary has taken or plans to take in response to the  
6           results of the evaluation required under paragraph  
7           (1).

8   **SEC. 106. ANNUAL ASSESSMENT OF QUALITY ASSURANCE**  
9                           **PROGRAM.**

10          (a) ANNUAL ASSESSMENT REQUIRED.—Section 7731  
11       of title 38, United States Code, is amended by adding at  
12       the end the following new subsection:

13               “(c)(1) The Secretary shall enter into a contract with  
14       an independent third-party entity for the conduct of an  
15       annual assessment of the quality assurance program  
16       under this section. Each such assessment shall—

17                       “(A) evaluate a statistically valid sample of em-  
18       ployees of the Veterans Benefits Administration and  
19       a statistically valid sample of the work product of  
20       such employees to assess the quality and accuracy of  
21       such work product;

22                       “(B) measure the performance of each regional  
23       office of the Veterans Benefits Administration;

1           “(C) measure the accuracy of the disability rat-  
2           ings assigned under the schedule for rating disabil-  
3           ities under section 1155 of this title;

4           “(D) compare disability ratings and evaluate  
5           consistency between regional offices;

6           “(E) assess the performance of employees and  
7           managers of the Veterans Benefits Administration;  
8           and

9           “(F) produce automated categorizable data to  
10          help identify trends.

11          “(2) The Secretary shall use information gathered  
12          through the annual assessments required under this sec-  
13          tion in developing the employee certification required  
14          under section 7735 of this title.

15          “(3) In order to carry out the quality assurance pro-  
16          gram under this subsection with respect to the administra-  
17          tion of disability compensation and to reduce the variances  
18          between ratings in the regional offices of the Department,  
19          the Secretary shall ensure the accuracy and consistency  
20          across different offices within the Department of the treat-  
21          ment of claims for disability compensation, including de-  
22          terminations with respect to disability ratings and whether  
23          a disability is service-connected.

24          “(4)(A) The Secretary shall retain, monitor, and  
25          store in an accessible format data described in subpara-

1 graph (B), including development of a demographic base-  
2 line.

3 “(B) The data covered by this paragraph includes the  
4 following:

5 “(i) For each claim for disability compensation  
6 under laws administered by the Secretary submitted  
7 by a claimant—

8 “(I) the State in which the claimant re-  
9 sided when the claim was submitted;

10 “(II) the decision of the Secretary with re-  
11 spect to the claim;

12 “(III) the regional office and individual  
13 employee of the Department responsible for  
14 evaluating the claim; and

15 “(IV) the sex and race of the claimant.

16 “(ii) The State of the claimant’s residence.

17 “(iii) Such other data as the Secretary deter-  
18 mines is appropriate for monitoring the accuracy  
19 and consistency of decisions with respect to such  
20 claims.

21 “(5) Nothing in this subsection shall require the Sec-  
22 retary to replace the quality assurance program under this  
23 section, as in effect on the date of the enactment of the  
24 Veterans Disability Benefits Claims Modernization Act of  
25 2008.”.

1 (b) REPORT TO CONGRESS.—Section 7734 of such  
2 title is amended—

3 (1) in paragraph (2), by striking “and” at the  
4 end;

5 (2) by redesignating paragraph (3) as para-  
6 graph (4); and

7 (3) by inserting after paragraph (2) the fol-  
8 lowing new paragraph (3):

9 “(3) the results and findings of the most recent  
10 annual assessment conducted under section 7731(c)  
11 of this title; and”.

12 **SEC. 107. EXPEDITED TREATMENT OF FULLY DEVELOPED**  
13 **CLAIMS AND REQUIREMENT FOR CHECKLIST**  
14 **TO BE PROVIDED TO INDIVIDUALS SUBMIT-**  
15 **TING INCOMPLETE CLAIMS.**

16 (a) EXPEDITED TREATMENT OF FULLY DEVELOPED  
17 CLAIMS.—

18 (1) IN GENERAL.—Subchapter I of chapter 51  
19 of title 38, United States Code, is amended by add-  
20 ing at the end the following new section:

21 **“§ 5109C. Expedited treatment of fully developed**  
22 **claims**

23 “(a) EXPEDITED TREATMENT REQUIRED.—The Sec-  
24 retary shall take such actions as may be necessary to pro-  
25 vide for the expeditious treatment by the appropriate re-

1 gional office of the Veterans Benefits Administration of  
2 any fully developed claim to ensure that any such claim  
3 is adjudicated not later than 90 days after the date on  
4 which the claim is submitted.

5 “(b) NOTICE OF REQUIRED INFORMATION AND EVIDENCE.—Nothing in this section shall affect the responsibility of the Secretary to provide notice under section 5103  
6 to a claimant and a claimant’s representative of required  
7 information and evidence that is necessary to substantiate  
8 a fully developed claim.

11 “(c) FULLY DEVELOPED CLAIM DEFINED.—For  
12 purposes of this section, the term ‘fully developed claim’  
13 means a claim for a benefit under a law administered by  
14 the Secretary—

15 “(1) for which the claimant—

16 “(A) received assistance from a veterans  
17 service officer, a State or county veterans service officer, an agent, or an attorney; or

19 “(B) submits along with the claim an appropriate indication that the claimant does not  
20 intend to submit any additional information in  
21 support of the claim and does not require additional assistance with respect to the claim; and

24 “(2) for which the claimant submits a certification in writing that is signed by the claimant stat-

1       ing that at the time of signature, no additional in-  
 2       formation is available or needs to be submitted in  
 3       order for the claim to be adjudicated.”.

4               (2) CLERICAL AMENDMENT.—The table of sec-  
 5       tions at the beginning of such chapter is amended  
 6       by adding at the end of the items relating to sub-  
 7       chapter I the following new item:

“5109C. Expedited treatment of fully developed claims.”.

8               (3) DEADLINES FOR IMPLEMENTATION.—By  
 9       not later than 180 days after the date of the enact-  
 10      ment of this Act, the Secretary of Veterans Affairs  
 11      shall establish a process for expediting claims under  
 12      section 5109C of title 38, United States Code, as  
 13      added by paragraph (1).

14      (b) PROVISION OF CHECKLIST TO INDIVIDUALS SUB-  
 15      MITTING INCOMPLETE CLAIMS.—

16              (1) CHECKLIST.—Section 5103 of title 38,  
 17      United States Code, is amended—

18                      (A) by redesignating subsection (b) as sub-  
 19                      section (c); and

20                      (B) by inserting after subsection (a) the  
 21              following new subsection (b):

22      “(b) PROVISION OF CHECKLIST.—In providing notice  
 23      of required information and evidence to a claimant and  
 24      a claimant’s representative, if any, under subsection (a),  
 25      the Secretary shall provide to the claimant and any such

1 representative a checklist that includes a detailed descrip-  
2 tion of information or evidence required to be submitted  
3 by the claimant to substantiate the claim.”.

4 (2) EFFECTIVE DATE.—Subsection (b) of sec-  
5 tion 5103 of title 38, United States Code, as added  
6 by paragraph (1) shall apply with respect to notice  
7 provided after the date that is one year after the  
8 date of the enactment of this Act.

9 (3) DEADLINE FOR CREATION OF CHECK-  
10 LIST.—By not later than 180 days after the date of  
11 the enactment of this Act, the Secretary of Veterans  
12 Affairs shall create the checklist required under such  
13 subsection, as so added.

14 (4) SUBMITTAL TO CONGRESS.—Not later than  
15 60 days after the Secretary creates the checklist re-  
16 quired by such subsection, as so added, the Sec-  
17 retary shall submit to Congress the checklist.

18 **SEC. 108. STUDY AND REPORT ON EMPLOYING MEDICAL**  
19 **PROFESSIONALS TO ASSIST EMPLOYEES OF**  
20 **VETERANS BENEFITS ADMINISTRATION.**

21 (a) STUDY.—The Secretary of Veterans Affairs shall  
22 conduct a study to evaluate the need of the Veterans Ben-  
23 efits Administration of the Department of Veterans Af-  
24 fairs to employ, in addition to medical professionals of the  
25 Veterans Health Administration, including medical profes-



1 sionals who are not physicians, to act as a medical ref-  
2 erence for employees of the Administration so that such  
3 employees may accurately assess medical evidence sub-  
4 mitted in support of claims for benefits under laws admin-  
5 istered by the Secretary. In no case shall any such medical  
6 professional be employed to rate any disability or evaluate  
7 any claim. In conducting the study, the Secretary shall  
8 conduct statistically significant surveys of employees of  
9 the Administration to ascertain whether, how, and to what  
10 degree medical professionals could provide assistance to  
11 such employees.

12 (b) REPORT TO CONGRESS.—Not later than 180 days  
13 after the date of the enactment of this Act, the Secretary  
14 shall submit to Congress a report on the study conducted  
15 under subsection (a).

16 (c) ACCESS TO MEDICAL PROFESSIONALS.—If the  
17 Secretary hires medical professionals pursuant to the  
18 study conducted under this section, the Secretary shall en-  
19 sure that employees employed by all regional offices of the  
20 Veterans Benefits Administration have access to such  
21 medical professionals.

1 **SEC. 109. ASSIGNMENT OF PARTIAL DISABILITY RATINGS**  
2 **TO QUALIFYING VETERANS.**

3 (a) IN GENERAL.—Chapter 11 of title 38, United  
4 States Code, is amended by inserting after section 1155  
5 the following new section:

6 **“§ 1156. Partial disability ratings**

7 “(a) ASSIGNMENT OF PARTIAL RATINGS.—For the  
8 purpose of providing disability compensation under this  
9 chapter to a qualifying veteran, the Secretary shall assign  
10 a partial disability rating to the veteran as follows:

11 “(1) In the case of a qualifying veteran de-  
12 scribed in subsection (b)(3)(A), a rating of 100 per-  
13 cent.

14 “(2) In the case of a qualifying veteran de-  
15 scribed in subsection (b)(3)(B), a rating of 50 per-  
16 cent.

17 “(b) QUALIFYING VETERAN.—For the purposes of  
18 this section, a qualifying veteran is a veteran—

19 “(1) who has been discharged from active duty  
20 service for 365 days or less;

21 “(2) for whom a permanent disability rating is  
22 not immediately assignable under the regular provi-  
23 sions of the schedule for rating disabilities under  
24 section 1155 of this title or on the basis of indi-  
25 vidual unemployability; and

26 “(3) who has—

1           “(A) a severe disability for whom substan-  
2           tially gainful employment is not feasible or ad-  
3           visable; or

4           “(B) a wound or injury, whether healed,  
5           unhealed or incompletely healed for whom ma-  
6           terial impairment of employability is likely.

7           “(c) EXAMINATIONS.—A medical examination of a  
8           qualifying veteran is not required to be performed before  
9           assigning a partial disability rating to the veteran under  
10          this section, but the fact that such an examination is con-  
11          ducted shall not prevent the Secretary from assigning such  
12          a rating.

13          “(d) TERMINATION OF PARTIAL RATING.—(1) Ex-  
14          cept as provided in paragraph (2), a partial disability rat-  
15          ing assigned to a veteran under this section shall remain  
16          in effect until the earlier of the following dates:

17               “(A) The date on which the veteran receives a  
18               permanent disability rating based on the schedule  
19               for rating disabilities under section 1155 of this  
20               title.

21               “(B) The date that is 365 days after the date  
22               of the veteran’s last separation or release from ac-  
23               tive duty.

24          “(2) The Secretary may extend a partial disability  
25          rating assigned to a veteran under this section beyond the

1 applicable termination date under paragraph (1), if the  
 2 Secretary determines that such an extension is appro-  
 3 priate.”.

4 (b) EFFECTIVE DATE.—Section 1156 of title 38,  
 5 United States Code, as added by paragraph (1), shall take  
 6 effect on the date of the enactment of this Act.

7 (c) CLERICAL AMENDMENT.—The table of sections  
 8 at the beginning of such chapter is amended by inserting  
 9 after the item relating to section 1155 the following new  
 10 item:

“1156. Partial disability ratings.”.

11 **SEC. 110. REVIEW AND ENHANCEMENT OF USE OF INFOR-**  
 12 **MATION TECHNOLOGY AT VETERANS BENE-**  
 13 **FITS ADMINISTRATION.**

14 (a) REVIEW AND COMPREHENSIVE PLAN.—By not  
 15 later than one year after the date of the enactment of this  
 16 Act, the Secretary of Veterans Affairs shall conduct a re-  
 17 view of the use of information technology at the Veterans  
 18 Benefits Administration and develop a comprehensive plan  
 19 for the use of such technology in processing claims for  
 20 benefits under laws administered by the Secretary of Vet-  
 21 erans Affairs that would reduce subjectivity, avoidable re-  
 22 mands, and regional office variances in disability ratings.

23 (b) INFORMATION TECHNOLOGY.—The plan devel-  
 24 oped under subsection (a) shall include—

1           (1) the use of rules-based processing and infor-  
2           mation technology systems and automated decision  
3           support software at all levels of processing claims;

4           (2) the enhancement of the use of information  
5           technology for all aspects of the claims process;

6           (3) a technological platform that allows for the  
7           use of information that members of the Armed  
8           Forces, veterans, and dependents have submitted  
9           electronically, including uploaded military records,  
10          medical evidence, and other appropriate documenta-  
11          tion, and the capability to view applications for bene-  
12          fits submitted online;

13          (4) the use of electronic examination templates  
14          in conjunction with the schedule for rating disabil-  
15          ities under section 1155 of title 38, United States  
16          Code;

17          (5) making such changes as may be required to  
18          the information technology system of the Depart-  
19          ment so as to ensure that users of such system are  
20          able to access the service medical records of the De-  
21          partment of Defense by not later than one year after  
22          the date on which the plan is implemented;

23          (6) the provision of bi-directional access to med-  
24          ical records and service records between the Depart-

1       ment of Veterans Affairs and the Department of De-  
2       fense; and

3           (7) the availability, on the Internet website of  
4       the Department, of a mechanism that can be used  
5       by a claimant to check on the status of any claim  
6       submitted by that claimant and that provides infor-  
7       mation on—

8           (A) whether a decision has been reached  
9       with respect to such a claim, notice of the deci-  
10      sion; or

11          (B) if no such decision has been reached,  
12      notice of—

13           (i) whether the application submitted  
14      by the claimant is complete;

15           (ii) whether the Secretary requires ad-  
16      ditional information or evidence to process  
17      the claim;

18           (iii) the estimated date on which a de-  
19      cision with respect to the claim is expected  
20      to be made; and

21           (iv) the stage at which the claim is  
22      being processed as of the date on which  
23      such status is checked.

24      (c) REVIEW OF BEST PRACTICES AND LESSONS  
25      LEARNED.—In carrying out this section, the Secretary

1 shall review best practices and lessons learned within the  
2 Department of Veterans Affairs and the use of the tech-  
3 nology known as “VistA” by other Government entities  
4 and private sector organizations who employ information  
5 technology and automated decision support software

6 (d) REDUCTION OF CLAIMS PROCESSING TIME.—In  
7 carrying out this section, the Secretary shall ensure that  
8 a plan is developed that, within three years of implementa-  
9 tion, would reduce the processing time for each claim proc-  
10 essed by the Veterans Benefits Administration to not  
11 longer than the average amount of time to required to  
12 process a claim, as identified by the Secretary in the most  
13 recent annual report submitted by the Secretary under  
14 section 7734 of title 38, United States Code.

15 (e) CONSULTATION.—In carrying out this section, the  
16 Secretary of Veterans Affairs shall consult with informa-  
17 tion technology designers at the Veterans Health Adminis-  
18 tration, VistA managers, the Secretary of Defense, appro-  
19 priate officials of other Government agencies, appropriate  
20 individuals in the private and public sectors, veterans serv-  
21 ice organizations, and other relevant service organizations.

22 (f) REPORT TO CONGRESS.—By not later than Janu-  
23 ary 1, 2009, the Secretary shall submit to Congress a re-  
24 port on the review and comprehensive plan required under  
25 this section.

1 **SEC. 111. TREATMENT OF CLAIMS UPON DEATH OF CLAIM-**  
2 **ANT.**

3 (a) TREATMENT OF BENEFICIARY OF VETERAN'S  
4 ACCRUED BENEFITS AS CLAIMANT FOR PURPOSES OF IN-  
5 COMPLETE CLAIMS UPON DEATH OF VETERAN.—Chapter  
6 51 of title 38, United States Code, is amended by inserting  
7 after section 5121 the following new section:

8 **“§ 5121A. Substitution in case of death of claimant**

9 “(a) SUBSTITUTION.—If a veteran who is a claimant  
10 dies while a claim for any benefit under a law administered  
11 by the Secretary, or an appeal of a decision with respect  
12 to such a claim, is pending and awaiting adjudication, the  
13 person who would receive any accrued benefits due to the  
14 veteran under section 5121(a)(2) of this title shall be  
15 treated as the claimant for the purposes of processing the  
16 claim to completion, except that such person may only  
17 submit new evidence in support of the claim during the  
18 one-year period beginning on the date of the death of the  
19 veteran.

20 “(b) LIMITATION.—Only one person may be treated  
21 as the claimant under subsection (a).

22 “(c) DESIGNATION OF THIRD PARTY.—If the person  
23 who would be eligible to be treated as the claimant under  
24 subsection (a) certifies to the Secretary that the person  
25 does not want to be treated as the claimant for such pur-  
26 poses, such person may designate the person who would



1 receive the benefits under section 5121(a)(2) upon the  
 2 death of the person who would otherwise be treated as  
 3 the claimant under subsection (a) to be treated as the  
 4 claimant for the purposes of processing the claim to com-  
 5 pletion.”.

6 (b) CLERICAL AMENDMENT.—The table of sections  
 7 at the beginning of such chapter is amended by inserting  
 8 after the item relating to section 5121 the following new  
 9 item:

“5121A. Death of claimant.”.

10 (c) EFFECTIVE DATE.—The amendments made by  
 11 this section shall apply with respect to the claim of any  
 12 veteran who dies on or after the date of the enactment  
 13 of this Act.

## 14 **TITLE II—MATTERS RELATING** 15 **TO UNITED STATES COURT** 16 **OF APPEALS FOR VETERANS** 17 **CLAIMS**

### 18 **SEC. 201. ANNUAL REPORTS ON WORKLOAD OF UNITED** 19 **STATES COURT OF APPEALS FOR VETERANS** 20 **CLAIMS.**

21 (a) IN GENERAL.—Subchapter III of chapter 72 of  
 22 title 38, United States Code, is amended by adding at the  
 23 end the following new section:

1   **“§ 7288. Annual report**

2           “The chief judge of the Court shall annually submit  
3 to the Committee on Veterans’ Affairs of the Senate and  
4 the Committee on Veterans’ Affairs of the House of Rep-  
5 resentatives a report summarizing the workload of the  
6 Court during the last fiscal year that ended before the sub-  
7 mission of such report. Such report shall include, with re-  
8 spect to such fiscal year, the following information:

9           “(1) The number of appeals filed.

10          “(2) The number of petitions filed.

11          “(3) The number of applications filed under  
12 section 2412 of title 28.

13          “(4) The number and type of dispositions, in-  
14 cluding settlements.

15          “(5) The median time from filing to disposition.

16          “(6) The number of oral arguments.

17          “(7) The number and status of pending appeals  
18 and petitions and of applications described in para-  
19 graph (3).

20          “(8) A summary of any service performed by  
21 recalled retired judges during the fiscal year.

22          “(9) The number of decisions or dispositions  
23 rendered by a single judge, multi-judge panels and  
24 the full Court.

25          “(10) The number of cases pending longer than  
26 18 months.”.

1 (b) CLERICAL AMENDMENT.—The table of sections  
 2 at the beginning of such chapter is amended by inserting  
 3 after the item related to section 7287 the following new  
 4 item:

“7288. Annual report.”.

5 **SEC. 202. MODIFICATION OF JURISDICTION AND FINALITY**  
 6 **OF DECISIONS OF UNITED STATES COURT OF**  
 7 **APPEALS FOR VETERANS CLAIMS.**

8 (a) MODIFICATION.—Section 7252(a) of title 38,  
 9 United States Code, is amended—

10 (1) by striking the third sentence; and

11 (2) by adding at the end the following new sen-  
 12 tence: “The Court shall have power to affirm, mod-  
 13 ify, reverse, remand, or vacate and remand a deci-  
 14 sion of the Board after deciding all relevant assign-  
 15 ments of error raised by an appellant for each par-  
 16 ticular claim for benefits. In a case in which the  
 17 Court reverses a decision on the merits of a par-  
 18 ticular claim and orders an award of benefits, the  
 19 Court need not decide any additional assignments of  
 20 error with respect to that claim.”

21 (b) EFFECTIVE DATE.—The amendments made by  
 22 subsection (a) shall apply with respect to a decision of the

- 1 Board of Veterans' Appeals made on or after the date of
- 2 the enactment of this Act.

Passed the House of Representatives July 30, 2008.

Attest:

*Clerk.*



110TH CONGRESS  
2D Session

# H. R. 5892

## AN ACT

To amend title 38, United States Code, to direct the Secretary of Veterans Affairs to modernize the disability benefits claims processing system of the Department of Veterans Affairs to ensure the accurate and timely delivery of compensation to veterans and their families and survivors, and for other purposes.